IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.111 OF 2002

New Sion Co-operative Housing Society Ltd. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.

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Mr. C. J. Sawant, Senior Advocate with Mr. J. J. Thakkar for the Petitioner.
Mr.Bhagatraj Gurmukhdas Ahuja, Respondent No.4-in-person.

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CORAM : DR. D.Y. CHANDRACHUD, J.

October 13, 2006.

ORAL JUDGMENT:

The Petitioner was registered as a Co-operative Housing Society under the Bombay Co-operative Societies' Act, 1925 and is now deemed to have been registered under the Maharashtra Co-operative Societies' Act, 1960. The society is registered as a plot owners' Housing Society, the main object whereof is to constitute a body of persons who would be allotted residential flats on land leased out by the Municipal Corporation. The immovable property of the Society consists of a Housing Complex known as Sindhi Colony

situated at Sion (West) in the F-North Ward of the Municipal Corporation. There are about 279 Row Houses in the Housing Complex, the owners whereof are allottees of plots and members of the Petitioner. Row House 10-B/6 in the complex belonged to (i) Nanik Kishanchand Ahuja, (ii) Gopal Kishanchand Ahuja and (iii) Sajan Kishanchand Ahuja, who were members of the Co-operative Society. In token of their membership, they were allotted five shares. It has been stated that for about 40 years, the Row House was in exclusive possession of one Mansukhlal Rachh, who was a tenant. Mansukhlal Rachh instituted a declaratory suit in the Court of Small Causes at Mumbai, being RAD Suit 1209 of 1996 which is stated to be pending. The Fourth Respondent claims to have an agreement to sell dated 21st January 1995 under which he agreed to purchase the aforesaid Row House. On 1st February 1995, a notice was forwarded to the Petitioner indicating the intention of the original member to transfer the shares and the right, title and interest in respect of the Row House in favour of the Fourth Respondent. The Managing Committee of the Society passed a resolution on 13th February 1995 recording the refusal of the Society to the proposed transfer of interest

in favour of the Fourth Respondent “since in the larger interest of the Society and its members, it is not desirable to admit Mr.Bhagatraj Gurumukhdas Ahuja as a member of the Society.” On 5th March 1995, a Special General Body Meeting of the Society was held at which, according to the Petitioner, the members unanimously decided that “in the larger interest of the Petitioner-Society”, the Fourth Respondent should not be admitted as a member.

2. The Fourth Respondent filed an appeal before the Assistant Registrar of Co-operative Societies, under Section 23(2) of the Maharashtra Co-operative Societies' Act, 1960. The Petitioner filed an application for deciding as a preliminary issue, the jurisdiction of the Assistant Registrar. It appears that the case of the Petitioner was that a dispute (Case No.CC/III/450 of 1995) was filed by some members of the Society which was pending and it was urged that the Assistant Registrar could not entertain or deal with the appeal until the pending dispute was decided by the Cooperative Court. The Assistant Registrar of Co-operative Societies, passed an order on 12th September 1996 holding that the resolution passed by the Managing

Committee in the Special General Meeting not to admit the Fourth Respondent as a member was against the “basic principle of cooperation” and was in contravention of Section 23(1) of the Maharashtra Co-operative Societies' Act, 1960. The Assistant Registrar held that the Fourth Respondent had rightfully acquired the right, title and interest in respect of the Row House under an agreement to sale and that the outgoing members had given their consent for the transfer.

3. The Petitioner carried the matter in revision before the Divisional Joint Registrar. Ground (g) in the revision application was to the following effect :

> “That, the Applicant have submitted only Application for deciding preliminary issue of jurisdiction. However, Respondent No.2 decided entire Appeal without giving any opportunity to the Applicant to argue matter on merits. It is settled legal position that, any order without proper opportunity is illegal, bad-in-law and hence deserves to be quashed and set aside.”

The Petitioner also submitted that the Assistant Registrar had failed to consider the resolution passed in the meeting of the General Body.

The Divisional Joint Registrar, passed an order on 7th March 2001. The Petitioner was absent. The Divisional Joint Registrar, observed that in the appeal memo the following main ground had been urged to challenge the order of the Assistant Registrar:

> "From the appeal memo of the Applicant-Society it appears that it is the contention of the Applicant society that Respondent No.2 Assistant Registrar has passed the impugned order without going into the merits of the case. It appears that it was the case before Respondent No.2 Assistant registrar to decide the issue of jurisdiction. However, he decided the entire appeal without giving any opportunity to the Applicant Society to argue the matter on merits. The Respondent No.1 has not yet complied with the requirement such as payment of Stamp Duty, Registration etc. In spite of said position, the impugned order is passed."

After recording the aforesaid objection, the Divisional Joint Registrar, proceeded to dismiss the revision application with the following cryptic observations :

> "After hearing the parties concerned and on perusal of the documents presented in this case, there appears to be no substantial ground made out by the Applicant Society for non admission of the Respondent No.1 as its member. Respondent No.2 has passed the speaking order which needs no interference and, hence, I am pleased to passed the following order :
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> ORDER

> Revision Application is dismissed. The impugned order dated 12-9-1996 passed by the Respondent No.1 Assistant Registrar, Co-op. Socys. F/N-Ward, Mumbai under Section 23(2) of the M. C. S. Act, 1960 is hereby confirmed."

4. On behalf of the Petitioner, it has been submitted that the facts of the case would show that the Assistant Registrar was requested to consider a preliminary objection in regard to his jurisdiction. The Assistant Registrar, according to the Petitioner, proceeded to dispose of the main appeal without considering whether the Petitioner had sufficient ground within the meaning of Section 23 (1) of the Maharashtra Co-operative Societies' Act, 1960, for refusing admission to membership to the Fourth Respondent. A Chamber Summons has been filed in these proceedings on behalf of the Petitioner to set out the basis on which the Co-operative Society has in its General Body Meeting come to the conclusion that it is not desirable to admit the Fourth Respondent as a member. A reference has been made to several disputes between the Petitioner and the Fourth Respondent. The Fourth Respondent, it would appear, was an Architect of the Society at the material point of time and one of the grievances of the Society is that at the behest of the Fourth

Respondent, the Assistant Registrar of Co-operative Societies, F-North Ward had recommended deregistration of the Society under Section 21A of the Act though that order was subsequently set aside by the Divisional Joint Registrar, on 28th March 2002. It is urged on behalf of the Petitioner that the question as to whether the Society has sufficient ground for refusing membership ought to have been considered, but has not been considered either by the Assistant Registrar or in revision by the Divisional Joint Registrar. Relying on the appeal memo of the Fourth Respondent before the Assistant Registrar, it is submitted that even according to the Fourth Respondent the Society had pending disputes with him. Reliance was placed on the judgment of the Division Bench of this Court in **President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd. vs. Ramchandra Damodar Umalkar**,[1] and on the judgment of the Supreme Court in **Zoroastrian Co-operative Housing Society Ltd. vs. District Registrar, Co-operative Societies (Urban)**.[2] On the other hand, the Fourth Respondent who has appeared in person has supported the order passed by the

1 1967 CTD(H) 1
2 2005(3) Bom. C..R. 515

Assistant Registrar and by the Divisional Joint Registrar. The Fourth Respondent submitted that the objection to the jurisdiction of the Assistant Registrar was completely without foundation. According to the Fourth Respondent, he had actually and duly completed the entire project for the Co-operative Society and in so far as he is concerned, there is no valid dispute between him and the Co-operative Society. Reliance was placed on the judgment of the Learned Single Judge in **Sneh Sadan Co-op.Hsg. Soc. Ltd. Vs. State of Maharashtra**,[3] to submit that the dispute between the Petitioner and the Fourth Respondent, if any, should not constitute a valid ground to deny him membership.

5. Sub-section (1) of Section 23 of the Maharashtra Co-operative Societies' Act, 1960, provides that no Society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of the Act and its bye-laws. These provisions came up for consideration before the Division Bench of this Court in **President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd. vs. Ramchandra**

3 AIR 2004 Bombay 315

Damodar Umalkar (supra). Mr. Justice Abhyankar speaking for the Bench consisting of himself and Tulzapurkar, J. (as the Learned Judge then was), observed thus:

> "It is common knowledge that healthy growth of Co-operative Societies is primarily dependent on mutual trust among others. If majority of members do not have a trust in the member, the best thing for everybody is that that person stays out. We therefore fail to see how the Assistant Registrar could take upon himself to foist a person whose membership was rejected by the overwhelming majority of the members, on the specious ground that the principle of open membership ought to be supported. It is true while on the one hand an institution like a Co-operative Society should not e allowed to be exploited by influential persons to form a caucus, it is equally necessary that elements considered undesirable by overwhelming majority of persons should not be foisted on unwilling members to destroy the homogeneity of the organisation by which the very basis of co-operative effort will be put in jeopardy."

6. In the recent judgment of the Supreme Court in **Zoroastrian Housing Society's case** (supra), the Supreme Court inter alia considered the provisions of Section 24 of the Gujarat Co-operative Societies' Act, 1961 which are *pari materia* to those of Section 23(1) of the Maharashtra Act. The marginal note of the two sections is 'open membership'. Sub-section (1) of the Gujarat Act like the corresponding provision of the Maharashtra Act provides that no

society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of the Act, rules and bye-laws of the Society. The Supreme Court observed as follows:

> "Membership in a Co-operative Society only brings about a contractual relationship among the members forming it subject of course to the Act and the Rules. One becomes a member in a Co-operative Society either at the time of its formation or acquires membership in it on possessing the requisite qualification under the bye-laws of the society and on being accepted as a member. It is not as if one has a fundamental right to become a member of a Co-operative Society. But certainly, if the application of one for membership who is otherwise qualified to be a member under the act, Rules and the bye-laws of the society, is rejected unreasonably or for frivolous reasons, the person may be entitled to enforce his claim to become a member in an appropriate forum or Court of law."

7. In the present case, a perusal of the proceedings would show that the Petitioner had initially moved an application before the Assistant Registrar questioning his jurisdiction to entertain the appeal under Section 23(2) on the ground that a dispute was pending before the Cooperative Court. The Assistant Registrar while holding that the pendency of the dispute did not preclude him from disposing of the appeal, allowed the appeal on merits. The Divisional Joint Registrar, in the revisional order took note of the ground in the memo of the

revision that the Petitioner who had moved an application for questioning the jurisdiction of the Assistant Registrar had not had an adequate opportunity of demonstrating the sufficiency of its ground to deny membership to the Fourth Respondent. The Divisional Joint Registrar, has passed a cryptic order merely holding that there appears to be no substantial ground made out by the Society for non-admission of the Fourth Respondent herein. In my view, it was necessary for the authorities below to consider as to whether within the meaning of Sub-section (1) of Section 23, the Co-operative Society, had a sufficient cause for declining membership. This in the very nature of things ought to have been considered by the authority constituted to decide the issue under the Maharashtra Co-operative Societies' Act, 1960. It would neither be appropriate, nor proper for this Court to comment upon the sufficiency of the grounds that have been raised on behalf of the Petitioner in the Chamber Summons. An assessment of the facts should be made by the competent authority. Hence, it would be necessary to grant the Petitioner an opportunity of making out its case before the Divisional Joint Registrar, including on the grounds which are urged in support of the Chamber Summons.

8. In these circumstances, in order a facilitate a fresh determination on remand, the impugned order of the Divisional Joint Registrar, dated 7th March 2001 is quashed and set aside. Parties shall appear before the Divisional Joint Registrar, on 13th November 2006 for receiving directions. It would be open to the Petitioner on the aforesaid day to file a further affidavit, if any, in support of the case of the Petitioner in the revision application. The Fourth Respondent shall file his response, if any, within a period of two weeks thereafter. The Divisional Joint Registrar shall, after hearing the parties, pass final orders upon remand on or before 15th December 2006. It is clarified that the Divisional Joint Registrar shall decide the issue as to whether any sufficient cause has been made out by the Petitioner for denying membership to the Fourth Respondent in accordance with law and nothing contained in this judgment and order shall be construed to be the expression of any opinion by the Court on the merits of that question.

9. The petition is accordingly allowed and shall stand disposed of in the aforesaid terms. There shall be no order as to costs.

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